

ROSS, BANKS, MAY, CRON & CAVIN, P.C.
Attorneys at Law

FEB 22 2011

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February 21, 2011

RECORDATION NO. 28042-A FILED

Via Federal Express

Secretary
Surface Transportation Board
395 "E" St. SW
Washington, D.C. 20423

FEB 23 '11 -1 25 PM

SURFACE TRANSPORTATION BOARD

Re: The certain note in the original principal amount of \$250,000.00 executed by Phillip R. Lively and payable to Icon Bank of Texas, N.A. ("Loan").
Our File No. 4261-03B

Dear Sir/Madam:


On behalf of Icon Bank of Texas, N.A., I hereby submit for filing and recording an executed original of a primary document, not previously recorded, entitled Collateral Assignment of Notes and Liens dated February 10, 2011.

Enclosed is our firm check number in the amount of \$41.00 in payment of the filing fee. The file-stamped Assignment should be returned to the undersigned at the address provided below.

Thank you for your assistance and please do not hesitate to contact me at (713) 626-1200 should you have any questions or need additional information.

Very truly yours,

ROSS, BANKS, MAY, CRON & CAVIN, P.C.



Jim D. Hamilton
For the Firm

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FEB 22 2011

SURFACE TRANSPORTATION BOARD COLLATERAL ASSIGNMENT OF NOTES AND LIENS

This COLLATERAL ASSIGNMENT OF NOTES AND LIENS (this "Assignment") is dated, to be effective as of the 10 day of Feb, 2011, by Warner W. Abel, Jr. ("Assignor"), in favor of Icon Bank of Texas, N.A ("Assignee").

RECITALS:

WHEREAS, Assignor has executed and delivered to Assignee that certain promissory note (the "Note") dated of even date hereof in the original principal amount of \$245,000.00; and

WHEREAS, Assignor has agreed to collaterally assign to Assignee, as security for the Note, that certain promissory note in the original principal amount of \$250,000.00, dated May 8, 2009 executed by Philip R. Lively and payable to Icon Bank of Texas, N.A. and any renewals, extensions, modifications or amendments thereto, said Note being secured by a Railroad Car Mortgage, Security Interest Agreement Assignment of Interest in Leases and Financing Statement, filed under Surface Transportation Board Recordation No. 28042, of even date with the Note, against the nine (9) railcars described therein and a financing statement filed with the Texas Secretary of State under file no. 09-0027143682 (as renewed, extended and amended from time to time, the "Collateral Note"), together with all liens, assignments and security interests now or hereafter securing such Collateral Note, including, without limitation, the liens, assignments and security interests granted pursuant to the Railroad Car Mortgage, Security Interest Agreement Assignment of Interest in Leases and Financing Statement, filed under Surface Transportation Board Recordation No. 28042, of even date with the Note, against the nine (9) railcars described therein and a financing statement filed with the Texas Secretary of State under file no. 09-0027143682 (as renewed, extended and amended from time to time, the "Mortgage Lien") (the Collateral Note, the Mortgage Lien and all other documents evidencing, securing or relating to the Collateral Note and Mortgage Lien are referred to herein collectively as the "Loan Documents"), in order to secure the payment and satisfaction of the Note;

AGREEMENT:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Assignor has ASSIGNED, PLEDGED, SOLD, TRANSFERRED, CONVEYED, ENDORSED and DELIVERED, and by these presents does hereby ASSIGN, PLEDGE, SELL, TRANSFER, CONVEY, ENDORSE and DELIVER unto Assignee, and GRANT a SECURITY INTEREST in favor of Assignee in the following (collectively, the "Collateral"):

a. The Collateral Note and all indebtedness now or hereafter evidenced thereby or owed in respect thereof;

b. All of the rights, titles, interests, liens, privileges, claims, benefits, demands, equities, guaranties, pledges, security interests and assignments now or hereafter owned, held, accruing and to accrue to, and for the benefit of, Assignor in respect of the Collateral Note, including, without limitation, the Mortgage Lien and all

rights arising under any and all security agreements, participation agreements, collateral assignments, subordination or parity agreements, casualty insurance policies and binders, mortgagee's title insurance policies and binders, payment bonds and performance bonds) in any way accruing or to accrue to the benefit of Assignor, in any fashion in respect of the Collateral Note or any indebtedness now or hereafter evidenced thereby or owed in respect thereof, and together with all proceeds, monies, payments, income, collections and benefits from or attributable or accruing thereto, and all other agreements now existing or hereafter arising that provide collateral security or financial or other support for the payment of the Collateral Note; and

c. any and all proceeds of any of the foregoing as more particularly described in that certain Collateral Assignment of Proceeds ("**Proceeds Assignment**") of even date herewith executed by Assignor and Assignee.

1. **Representations and Warranties.** Assignor hereby represents and warrants to Assignee that:

a. Assignor is the legal and equitable owner and holder of the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral.

b. All of Assignor's books and records with regard to the Collateral are maintained and kept at the address of Assignor set forth in this Assignment.

c. Assignor's execution, delivery and performance of this Assignment will not require (i) any consent of any other person or entity, or (ii) any consent, license, permit, authorization or other approval (including foreign exchange approvals) of any court, arbitrator, administrative agency or other governmental authority, or any notice to, exemption by, any registration, declaration or filing with or the taking of any other action in respect of, any such court, arbitrator, administrative agency or other governmental authority.

2. **Obligations Secured.** This Assignment is granted to Assignee to secure the prompt and unconditional payment and satisfaction of the indebtedness evidenced by the Note (which term includes any increase, modification, renewal, extension, alteration, substitution or replacement thereof) (all such obligations together with any renewals, extensions or modifications of the same are hereinafter referred to as the "**Indebtedness**").

3. **Default and Remedies.**

a. Prior to the occurrence of an Event of Default, Assignor shall have a revocable license to collect and receive all payments of principal and interest on the Collateral Note and enforce the terms and provisions of the Mortgage Lien, and, Assignee covenants and agrees to cooperate with Assignor in connection with Assignor's collection and enforcement activities. Upon or at any time after an Event of Default, the license granted hereinabove may be revoked by Assignee, and Assignee may thereafter collect, retain and apply all sums payable under the Collateral Note and Mortgage Lien toward payment of the Indebtedness in such priority and proportions as Assignee in its

sole discretion shall elect. After the occurrence of each Event of Default, all amounts received by Assignor under or pursuant to the Collateral Note and/or the Mortgage Lien (including the proceeds of any foreclosure) shall be held in trust by Assignor for the benefit of Assignee and shall be promptly remitted to Assignee.

b. Upon or at any time after the occurrence of an Event of Default, Assignee may, at its option, without notice, declare all or any part of the Indebtedness immediately due and payable, and without in any way waiving such Event of Default, may at its option without notice (except such as may be required by law and cannot be waived) and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, (i) sell or otherwise dispose of the Collateral, at any public or private sale or exercise any other rights or remedies permitted by the Uniform Commercial Code as adopted and in effect in the States where the Mortgage Lien were created and to the extent governing, any other applicable jurisdiction (the "Code") or otherwise available to Assignee at law or in equity, and/or (ii) demand, sue or otherwise collect and receive when due or at any time thereafter all obligations and indebtedness evidenced by the Collateral Note and Mortgage Lien.

c. Without limiting the generality of the foregoing, Assignee, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below or as required in the Note) to or upon Assignor or any other Person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more public or private sale or sales, at any exchange, broker's board or office of Assignee or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Assignee shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Assignor, which right or equity is hereby waived and released. Assignor further agrees, at Assignee's request, to assemble the Collateral and make it available to Assignee at places that Assignee shall reasonably select.

d. Upon any such sale or disposition of the Collateral Note and/or the Mortgage Lien. Assignee shall be fully authorized to endorse (or complete the endorsement of) the Collateral Note to the transferee thereof and to file and record a transfer of note and liens and related form UCC-2 or UCC-3 financing statements to disclose the conveyance of the Collateral Note and Mortgage Lien so sold to the transferee thereof.

e. Assignee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9.207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as Assignee deals with similar property for its own account. Neither Assignee, nor any of its

directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Assignor or otherwise.

f. In the event Assignor elects to enforce the collection of the Collateral Note and/or foreclose the Mortgage Lien, then Assignor shall immediately pay over to Assignee all sums received from such enforcement or foreclosure. In the event Assignor becomes owner of the property pledged as security for the Collateral Note, then Assignee shall automatically have a lien on such property and Assignor shall immediately execute the appropriate security instrument evidencing same.

g. Assignor agrees to pay in full all reasonable expenses, including reasonable attorneys' fees, of Assignee which have been or may be incurred by Assignee in connection with the enforcement of any of Assignor's obligations hereunder and under any document executed in connection with any grant or pledge of security for the payment of the Indebtedness.

h. Assignor agrees to execute, acknowledge, deliver, procure, and allow the filing and/or recording of the appropriate document or instrument (including specifically, but without limitation, any financing statement or assignment of note and lien) deemed advisable by Assignee to protect the liens and the security interests herein granted, including against the rights or interests of third parties.

4. Notices. The requirement of reasonable notice to Assignor of the time and place of any public sale of the Collateral, or of the time after which any private sale or any other intended disposition thereof is to be made, shall be met if such notice is given at least ten (10) days prior to the date of such intended disposition, to the address of Assignor.

5. Binding Effect. This Assignment shall (i) be binding on Assignor and its representatives and permitted successors and assigns, and (ii) inure, together with all rights and remedies of Assignee hereunder, to the benefit of Assignee and the Lenders and their respective successors, transferees and assigns.

6. Modifications, Amendments, Etc. No modification, waiver, amendment, discharge or change of, nor consent to the departure from, any provision hereof shall be effective unless it is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, change or consent is sought, and then such modification, waiver, amendment, discharge, change or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Severability. A determination that any portion of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and the determination that the applicability of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. Any such provision shall be fully severable, and this Assignment shall be construed and enforced as if such provision had never comprised a part thereof. Furthermore, in lieu of such illegal, invalid or unenforceable provision,

there shall be added automatically as part of this Assignment a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

8. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute but one agreement binding on all the parties hereto.

9. No Third Party Beneficiaries. This Assignment is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other person or entity shall have any right of action hereon, right to claim any right or benefit from the terms contained herein, or be deemed a third party beneficiary of this Assignment.

10. Governing Law. THIS ASSIGNMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY TEXAS LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) except that the provisions of the laws of the State where the Mortgage Lien was created shall be applicable to the creation, perfection and enforcement of the security interests created by this Assignment.

[Signature Page Follows]

EXECUTED effective as of the day and date hereinabove written.

ASSIGNOR:

Ma M. a

Warner W. Abel, Jr.

THE STATE OF TEXAS

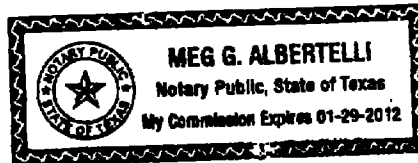
COUNTY OF

Harris

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This instrument was acknowledged before me on Feb 10, 2011, by Warner W. Abel, Jr.

Meg G. Albertelli
Notary Public, The State of Texas



After Recording mail to:

ICON BANK OF TEXAS
7908 N. Sam Houston Pkwy. W.
Suite 100
Houston, Texas 77064